

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TRAVIS MICKELSON, DANIELLE H.  
MICKELSON, and the marital community,

Plaintiffs,

v.

CHASE HOME FINANCE, LLC, et al.,

Defendants.

No. C11-01445 MJP

DEFENDANTS' NOTICE OF  
INTENT TO FILE SURREPLY  
AND SURREPLY/MOTION TO  
STRIKE

**I. NOTICE OF INTENT TO FILE SURREPLY**

Pursuant to Local Civil Rule 7(g)(1), Defendants provide notice of their intent to file a surreply. Defendants received Plaintiffs' Reply in support of their Motion for Reconsideration (styled as an "Objection to Consideration of New Evidence in Response to Motion for Reconsideration for Motion to Dismiss as Opposed to Summary Judgment") [Dkt. 62] by ECF notice on May 3, 2012. Defendants timely filed this Notice of Intent to File Surreply "as soon after receiving the reply brief as practicable." LCR 7(g)(1).

**II. SURREPLY AND MOTION TO STRIKE**

Pursuant to Local Civil Rule 7(g), Defendants Chase Home Finance LLC, Mortgage Electronic Registration Systems, Inc., Federal Home Loan Mortgage Corporation, and JPMorgan Chase Bank, NA (collectively "Defendants"), request that the Court strike Plaintiffs' Reply in support of their Motion for Reconsideration (styled as an "Objection to Consideration of New Evidence in Response to Motion for Reconsideration for Motion to Dismiss as Opposed to

Summary Judgment”) [Dkt. 62]. Defendants request this relief because the Reply is improper under the Court’s Minute Order [Dkt. 60] and the Local Civil Rules. See LCR 7(h)(3). Under Local Civil Rule 7(h)(3), a court “may authorize a reply.” The Court’s Minute Order “invite[d] Defendants to file a single responsive brief,” but stated that “[n]o reply brief will be permitted unless by further order of the Court.” Dkt. 60. The Court neither issued a further order, nor did Plaintiffs seek one. Because the Court did not issue an order authorizing Plaintiffs’ Reply, the Court should strike the Reply as improper. See Dkt. 60; LCR 7(h)(3).

In any event, as stated in Defendants’ Joint Response to the Motion for Reconsideration, Defendants *agree* with Plaintiffs that the Court should *not* consider any of the evidence submitted by *either* party on Plaintiffs’ Motion for Reconsideration. Indeed, Defendants asked the Court *not* to consider this evidence in their Joint Response to the Motion for Reconsideration and showed why that evidence is irrelevant. See Dkt. 61 at 3 n.1, 4-5. It is Plaintiffs, not Defendants, who are attempting to go beyond the Amended Complaint, and Defendants’ responsive materials were offered only to the extent the Court considers Plaintiffs’ new evidence—which it should not do. Defendants will not re-hash its arguments here, other than to reiterate that the Court need not and should not consider the evidence to deny Plaintiffs’ Motion for Reconsideration.

### III. CONCLUSION

The Court should strike Plaintiff’s unauthorized surreply, reject Plaintiffs’ attempt to inject irrelevant new materials in connection with reconsideration of the Order granting the Motion to Dismiss, and ignore any evidence submitted after this Court’s dismissal Order.

DATED this 3rd day of May, 2012.

Davis Wright Tremaine LLP  
Attorneys for JPMorgan Chase Bank, N.A.,  
MERS, and Federal Home Loan Mortgage  
Corporation

By /s/ Fred B. Burnside  
Fred Burnside, WSBA # 32491  
Rebecca Francis, WSBA #41196

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on May 3, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- **Heidi E. Buck**  
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and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: N/A

DATED this 3rd day of May, 2012.

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N.A.; Mortgage Electronic Registration Systems  
Inc.; and Federal Home Loan Corporation

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